

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DEBORAH GETZ, et al.,  
Plaintiffs,  
v.  
THE BOEING COMPANY, et al.,  
Defendants.

No. C 07-6396 CW

ORDER GRANTING  
DEFENDANT'S MOTION  
TO DISMISS AND  
DENYING PLAINTIFFS'  
MOTION FOR DISCOVERY

Defendant At Engine Controls Ltd. (ATEC) moves to dismiss Plaintiffs' claim against it for lack of personal jurisdiction. Plaintiffs oppose the motion and move for discovery on the issue. Having considered all of the papers filed by the parties, the Court GRANTS the motion to dismiss and DENIES Plaintiffs' motion for discovery.

BACKGROUND

This case arises from the crash of a United States military helicopter on February 17 or 18, 2007. The helicopter was engaged in a combat mission in southeastern Afghanistan. The crash occurred after a sudden and unexpected loss of power, resulting in multiple deaths and severe bodily injuries.

The helicopter was a MH-47E Chinook equipped with a Full Authority Digital Electronic Control (FADEC) system. Madden Dec.

1 ¶ 6. An Hydro Mechanical Metering Fuel Unit (HMU) and a Digital  
2 Electronic Control Unit (DECU) comprised the FADEC system installed  
3 on the helicopter. Declaration of Terry Madden, Chairman of ATEC,  
4 ¶ 6.

5 Plaintiffs are thirty-three individuals who were injured in  
6 the helicopter crash or are the heirs of individuals killed in the  
7 crash. Two Plaintiffs are residents of the State of California.  
8 ATEC is a corporation that manufactures and provides technical  
9 support for digital engine control units (DECU), and has its  
10 headquarters and principal place of business in Manchester, United  
11 Kingdom.

12 The parties dispute whether the DECU installed on the  
13 helicopter was designed, assembled, manufactured, inspected,  
14 tested, marketed, sold, delivered, maintained, serviced or  
15 introduced into the stream of commerce by ATEC. Madden Dec. ¶ 5.

16 The parties also dispute whether ATEC was formerly known as  
17 Hawker Siddeley Dynamics Engineering Limited (Hawker Siddeley).  
18 According to the Declaration of ATEC's chairman, an investigation  
19 into the origin of the DECU revealed that it was originally  
20 designed during the 1980s by Hawker Siddeley, and later  
21 manufactured by Vosper Thornycroft Ltd., which subsequently changed  
22 its name to Vosper Thornycroft Engine Controls Ltd. Madden Dec.  
23 ¶¶ 7 a, b. The DECU was delivered by Vosper Thornycroft Controls  
24 Ltd. to Chandler Evans Control Systems in West Hartford,  
25 Connecticut in 2002. Id. It was combined with an HMU from  
26 Chandler Evans Control Systems to make up the FADEC for the  
27 helicopter. Madden Dec. ¶¶ 6 c, d.

28 According to Mr. Madden, ATEC's Chairman, at all times since

1 its inception in 2004, ATEC has been a resident and citizen of the  
2 United Kingdom. Madden Dec. ¶ 10. ATEC's officers and directors  
3 are all citizens and residents of the United Kingdom, and all  
4 maintain their offices in the United Kingdom. Madden Dec. ¶ 4.  
5 ATEC operates its business under the laws and regulations of the  
6 United Kingdom. Madden Dec. ¶ 5.

7 ATEC owns no property, real or personal, in California; ATEC  
8 maintains no offices, employees or personnel in California; ATEC  
9 has not consented to jurisdiction in California; ATEC was never  
10 served with a copy of the summons and amended complaint in this  
11 action while physically present in California, has never obtained a  
12 business license anywhere in California, and has never sold or  
13 delivered any product or performed any service for any person or  
14 entity located in California. Madden Dec. ¶¶ 10-25. Plaintiffs  
15 present no evidence to dispute this.

#### 16 PROCEDURAL HISTORY

17 Defendant The Boeing Company, with the consent of Defendants  
18 Honeywell International, Goodrich Corporation, and Chandler Evans  
19 Control Systems removed this case from state to federal court on  
20 December 18, 2007, under the Federal Officer Removal statute.  
21 28 U.S.C. § 1442(a)(1). Defendant ATEC was later served on October  
22 6, 2008 and thus did not participate in, or consent to, the  
23 removal.

#### 24 LEGAL STANDARD

25 Under Rule 12(b)(2) of the Federal Rules of Civil Procedure, a  
26 defendant may move to dismiss for lack of personal jurisdiction.  
27 The plaintiff then bears the burden of demonstrating that the Court  
28 has jurisdiction. Schwarzenegger v. Fred Martin Motor Co., 374

1 F.3d 797, 800 (9th Cir. 2004). The plaintiff "need only  
2 demonstrate facts that if true would support jurisdiction over the  
3 defendant." Ballard v. Savage, 65 F.3d 1495, 1498 (9th Cir. 1995).  
4 Uncontroverted allegations in the complaint must be taken as true.  
5 AT&T v. Compagnie Bruxelles Lambert, 94 F.3d 586, 588 (9th Cir.  
6 1996). However, the court may not assume the truth of such  
7 allegations if they are contradicted by affidavit. Data Disc, Inc.  
8 v. Systems Technology Associates, Inc., 557 F.2d 1280, 1284 (9th  
9 Cir. 1977). If the plaintiff also submits admissible evidence,  
10 conflicts in the evidence must be resolved in the plaintiff's  
11 favor. AT&T, 94 F.3d at 588.

12 There are two independent limitations on a court's power to  
13 exercise personal jurisdiction over a non-resident defendant: the  
14 applicable state personal jurisdiction rule and constitutional  
15 principles of due process. Sher v. Johnson, 911 F.2d 1357, 1361  
16 (9th Cir. 1990); Data Disc, Inc., 557 F.2d at 1286. California's  
17 jurisdictional statute is co-extensive with federal due process  
18 requirements; therefore, jurisdictional inquiries under state law  
19 and federal due process standards merge into one analysis. Rano v.  
20 Sipa Press, Inc., 987 F.2d 580, 587 (9th Cir. 1993).

21 The exercise of jurisdiction over a non-resident defendant  
22 violates the protections created by the due process clause unless  
23 the defendant has "minimum contacts" with the forum state so that  
24 the exercise of jurisdiction "does not offend traditional notions  
25 of fair play and substantial justice." International Shoe Co. v.  
26 Washington, 326 U.S. 310, 316 (1945). Personal jurisdiction may be  
27 either general or specific.  
28

## DISCUSSION

## I. Minimum Contacts with California

Because Plaintiffs do not contend that the Court has general jurisdiction over ATEC, the Court will consider whether it has specific jurisdiction.

Specific jurisdiction exists when the cause of action arises out of or relates to the defendant's activities within the forum. Data Disc, Inc, 557 F.2d at 1286. The "minimum contacts" required to assert specific jurisdiction are analyzed using a three-prong test: (1) the non-resident defendant must purposefully direct its activities towards, or consummate some transaction with, the forum or a resident thereof, or perform some act by which it purposefully avails itself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws; (2) the claim must be one which arises out of or results from the defendant's forum-related activities; and (3) the exercise of jurisdiction must be reasonable. Lake v. Lake, 817 F.2d 1416, 1421 (9th Cir. 1987). Each of these conditions is required for asserting jurisdiction. Insurance Co. of N. Am. v. Marina Salina Cruz, 649 F.2d 1266, 1270 (9th Cir. 1981).

In tort cases the first factor "usually consists of evidence of the defendant's actions outside the forum state that are directed at the forum, such as the distribution in the forum state of goods originating elsewhere." Schwarzenegger, 374 F.3d at 803.

Plaintiffs do not allege that ATEC, on its own, has any contacts with California. Plaintiffs allege that, through its predecessor entities, ATEC has minimum contacts with California; however Plaintiffs provide no facts supporting this allegation.

1 Plaintiffs provide no facts demonstrating that the DECU was  
2 distributed in California, or that any activities conducted by ATEC  
3 or its predecessors were purposefully directed towards, or were  
4 transactions consummated with, California or a resident thereof.  
5 Nor do Plaintiffs point to any act performed by ATEC or its  
6 predecessors by which it purposefully availed itself of the  
7 privilege of conducting activities in California, thereby invoking  
8 the benefits and protections of California's laws. Furthermore, it  
9 is uncontested that ATEC operates its business under the laws and  
10 regulations of the United Kingdom and that ATEC itself has never  
11 sold or delivered any product or performed any service to any  
12 person or entity located in California.

13 Plaintiffs do not meet their burden of demonstrating that ATEC  
14 has sufficient minimum contacts with California to justify specific  
15 jurisdiction.

#### 16 II. Minimum Contacts with the United States

17 Plaintiffs argue that the Court may exercise personal  
18 jurisdiction over ATEC because it is a foreign defendant with  
19 sufficient contacts with the United States as a whole.

20 Federal Rule of Civil Procedure 4(k)(2) gives a federal court  
21 personal jurisdiction over a defendant with minimum contacts with  
22 the United States as a whole when three conditions are met: (1) the  
23 cause of action must arise under federal law; (2) the defendant  
24 must not be subject to the personal jurisdiction of any state court  
25 of general jurisdiction; (3) the federal court's exercise of  
26 personal jurisdiction must comport with due process. Pebble Beach  
27 Co. v. Caddy, 453 F. 3d 1151, 1159 (9th Cir. 2006).

28 The purpose of Rule 4(k)(2) was to close a loophole that would

1 otherwise have allowed a foreign defendant with sufficient contacts  
2 with the United States as a whole to evade enforcement of federal  
3 law simply because its contacts were spread too thinly across  
4 various states to support jurisdiction in any one state. See  
5 Federal Rule of Civil Procedure 4(k)(2), Advisory Committee Note.

6 Plaintiffs argue that their causes of action arise under  
7 federal law because the removing Defendants removed under the  
8 Federal Officer Removal Statute, asserting affirmative federal  
9 defenses. However, a federal defense is not part of a plaintiff's  
10 properly pleaded statement of his or her claim. Rivet v. Regions  
11 Bank of La., 522 U.S. 470, 386-387 (1998) (citing Metropolitan Life  
12 Ins. Co. v. Taylor, 481 U.S. 58, 63 (1987); Gully v. First Nat.  
13 Bank in Meridian, 299 U.S. 109, 112 (1936) ("To bring a case within  
14 the [federal-question removal] statute, a right or immunity created  
15 by the Constitution or laws of the United States must be an  
16 element, and an essential one, of the plaintiff's cause of  
17 action.")). The Supreme Court has stated, "We have long held that  
18 '[t]he presence or absence of federal-question jurisdiction is  
19 governed by the well-pleaded complaint rule, which provides that  
20 federal jurisdiction exists only when a federal question is  
21 presented on the face of the plaintiff's properly pleaded  
22 complaint.'" Rivet, 522 U.S. at 474 (1998).

23 Plaintiffs' claims arise entirely under California law. A  
24 federal question is not presented on the face of Plaintiffs'  
25 complaint. Plaintiffs' claims do not arise under federal law.  
26 Actual or anticipated federal defenses are not part of Plaintiffs'  
27 well-pleaded complaint and do not create a federal question.

28 Because Plaintiffs' claims do not arise under federal law,

1 Rule 4(k)(2) does not apply and the Court may consider ATEC's  
2 contacts with California alone, not with the United States as a  
3 whole. The Court therefore GRANTS ATEC's motion to dismiss for  
4 lack of personal jurisdiction.

5 III. Plaintiffs' Request for Discovery

6 Plaintiffs ask for limited discovery in the hope of finding  
7 grounds for personal jurisdiction over ATEC.

8 "[W]here a plaintiff's claim of personal jurisdiction appears  
9 to be both attenuated and based on bare allegations in the face of  
10 specific denials made by defendants, the Court need not permit even  
11 limited discovery. . ." Terracom v. Valley Nat. Bank, 49 F.3d 555,  
12 (9th Cir. 1995) (citing Rich v. KIS Cal., Inc., 121 F.R.D. 254, 259  
13 (M.D.N.C. 1998)).

14 Plaintiffs' claim that the Court has personal jurisdiction  
15 over ATEC, which can be based only on minimum contacts with  
16 California, is both attenuated and reliant on bare allegations in  
17 the face of specific denials made in the declaration of ATEC's  
18 Chairman. The Court, therefore, will not permit discovery before  
19 granting ATEC's motion.

20 CONCLUSION

21 For the reasons stated above, the Court hereby GRANTS ATEC's  
22 motion to dismiss for lack of personal jurisdiction and DENIES  
23 Plaintiffs' request for limited discovery on jurisdiction.

24  
25 IT IS SO ORDERED.

26  
27 Dated: 3/10/09



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CLAUDIA WILKEN  
United States District Judge